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International Court of Justice

H0069-0002

Official transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering, et al, Defendants, sitting at Nurnberg, Germany, on February 25, 1946, 1000-1245, Lord Justice Lawrence presiding.

THE PRESIDENT: Dr. Horn, you dealt with Dahlerus last, I believe.

DR. HORN (Counsel for defendant Ribbentrop): That is right, Mr. President.

As the next witness, I ask the Tribunal to call General Koestring, who was military attache at Moscow. I ask he be called to Nurnberg. In this case I am also willing to forego the personal appearance of the witness if an interrogatory will be permitted.

SIR DAVID MAXWELL-FYFE: My Lord, we object to this witness and so Dr. Horn can develop it as far as he desires.

THE PRESIDENT: You object to him?

SIR DAVID MAXWELL-FYFE: We object.

THE PRESIDENT: Go on.

DR. HORN: I wish to ask the Tribunal in this case that the witness be called.

First, I understand there was a possibility, as I was told, that the witness might be called by the Prosecution. This has not been done.

I would like to be permitted to call this witness because he took part in the German-Russian negotiations from August to September 1939, at Moscow and from the beginning of hostilities against the Soviet Union he remained there in line of duty. The witness, therefore, is in a position to tell us about the attitude of important German personalities involved in the Russian-German pact and for these reasons, I ask the Tribunal to call the witness.

GENERAL RUDENKO: As has been stated by Sir David Maxwell-Fyfe, the Prosecution objects to the calling of this witness. I would like to state further the position of the Prosecution in this case.

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The witness took part in negotiations in 1939. The Tribunal is not so much interested in the fact of these negotiations as in their violation, and I believe if we call this witness it will only serve to lengthen the proceedings.

DR. HORN: Mr. President, I am sorry, I do not understand the reasoning of the General.

THE PRESIDENT: Would you repeat, General?

GENERAL RUDENKO: All right. To what Sir David Maxwell-Fyfe has already stated, objecting on behalf of the Prosecution, I wish to add, the calling of this witness because he took part in the negotiations in 1939 is quite unnecessary as the Tribunal is not interested in the fact of these negotiations. It is interested far more in the violation of this Treaty and therefore, the calling of this witness --

THE PRESIDENT: Go ahead.

GENERAL RUDENKO: May I continue, Mr. President?

THE PRESIDENT: Yes.

GENERAL RUDENKO: Therefore, I consider that the calling of this witness to this Court is unnecessary, as this witness has nothing to do with the case before us.

DR. HORN: I ask the Tribunal tp permit me to state that General Koestring for weeks was in the prison in Nurnberg at the disposal of the Prosecution. Therefore, I ask the Tribunal to permit me also to use him as a witness, for the reasons which I have mentioned.

THE PRESIDENT: The Tribunal will consider the matter.

Dr. Horn, the Tribunal does not understand the fact that General Koestring is in prison at Nurnberg is any answer to the objection which is made on behalf of the Prosecution, namely , that the Tribunal is not interested in negotiations which took place in September 1939 but in the violation of the Treaty. The Tribunal would like to know whether you have any answer to make to that objection? The only answer you have made up to date is that General Koestring is here in Nurnberg.

DR. HORN: Mr. President, General Koestring shall testify that the pact with the Soviet Union on the part of Germany and on the part of my

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client was made with the intention of its being kept.

I would like to say nothing further on this point and I ask the Court to call the witness on the basis of this reason.

THE PRESIDENT: Very well, the Tribunal will consider your request.

DR. HORN: The next witness is Legation Secretary Dr. Hesse, who was formerly in the Foreign Office in Berlin and now probably in the camp at Augsburg.

SIR DAVID MAXWELL-FYFE: My Lord, there is no objection to this witness. I do not know if Dr. Horn wants him in person or if an affidavit would do. The Prosecution do not feel strongly on the matter but they ask Dr. Horn whenever possible to accept an affidavit and they suggest that he might consider it in this case.

DR. HORN: In this case I will be satisfied with an affidavit.

The next witness is the former ambassador in Bucharest, Fabricius, now probably in Allied custody in the American zone or possibly even freed from custody.

SIR DAVID MAXWELL-FYFE: There is no objection in this case. Apparently this witness will speak as to an interview which is already in evidence before the Court and will give a different account of it. Prosecutio makes no objection under the circumstances.

THE PRESIDENT: The Tribunal will consider that.

DR. HORN: Thank you, Mr. President.

The next witness is Professor Carl Burckhardt, President of the International Red Cross in Geneva and formerly League of Nations Commissar at Danzig.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, Dr. Burckhardt is obviously in a very special position as President of the International Red Cross. He is a person to whom all belligerents, irrespective of country, are indebted and the point that the Prosecution make is that if he can speak to evidence coming from Hitler himself, that is if he can prove by saying that he was informed by Hitler that the defendant Ribbentrop had interceded or if he can say he saw letters received by Hitler from Ribbentrop, the

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Prosecution would have no objection.

If he is merely going to say that Ribbentrop told him so, the Prosecution would object.

Therefore, we submit that the reasonable course would be that he should make an affidavit as to his means of knowledge and if that is done and if the means of knowledge are satisfactory, I should not think for a moment that the Prosecution would do anything but accept the evidence of Dr. Burckhardt.

The second point, we submit, is irrelevant; the question of the results of the English promises of guarantee to Poland on the position in Danzig.

DR. HORN: Aside from the reasons which I have mentioned, I can also say that Professor Burckhardt in 1943 had met in Berlin with Ribbentrop and Hitler and therefore could make detailed statements and could give detailed information as to the reasons which I have mentioned for calling him.

That may be an answer to the first question by Sir David.

I also agree, however, that Professor Burckhardt's appearance would not be necessary if an interrogatory could be obtained.

THE PRESIDENT: Very well, we will consider that.

DR. HORN: The next witness is the Swiss Ambassador, Feldscher, who was last Ambassador at Berlin.

SIR DAVID MAXWELL-FYFE: I suggest, My Lord, that he comes into the same position as Dr. Burckhardt. He should be dealt with

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in the same way.

DR. HORN: I agree, Mr. President.

The next witness is the former Prime Minister of Great Britain, Winston Churchill.

SIR DAVID MAXWELL-FYFE: May it plwase the Tribunal, the Prosecution objects to this application and with the greatest respect to Dr. Horn, submit that there are no relevant reasons disclosed in the application now before the Tribunal. The first part of it is apparently an account of a conversation which does not touch the facts of this case and the second part is also a discussion of a conversation which apparently was some years before the war, between the German Ambassador and a gentleman, who at that time was in no official position in England. But what relevancy the conversation has to any of the issues in this case the Prosecution respectfully submits is not only non-apparent but non-existent.

DR. HORN: Against this statement of Sir David, I want to say first the following:

The Prime Minister, Winston Churchill, was at that time leader of the Opposition of His British Majesty in Parliament. In this position we may consider him somewhat of an official. In addition to that, as leader of the Opposition he was even paid by the government.

SIR DAVID MAXWELL-FYFE: I am sure that Dr. Horn would be the last person to rely on a point on which he has been misinformed.

Mr. Churchill was not leader of His Majesty's Opposition at any period and was certainly not from 1936 to 1938, when the defendant Ribbentrop was ambassador. Mr. Attlee was then leader of the Opposition. Mr. Churchill was not in office; was a backbench member of the Conservative Party, independent member of the Conservative Party at that time.

I did not want my friend to be under any misapprehension.

DR. HORN: At any rate, Mr. President, Mr. Churchill was one of the best known statesmen of England in Germany. This statement that Churchill had made at the time of his visit to the Embassy was immediately relayed by Ribbentrop and reported to Hitler. There is a high degree of probability

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that it is one of the reasons for Hitler making his surprising statement in the Hoszbach document, which has been submitted as PS-368. It was a surprise to everybody concerned and was in the first submission of proof by the Prosecution of a hint of conspiracy in the sense of the Indictment.

Furthermore, I would like to say that the British Prosecutor has mentioned that after the seizure of Czechoslovakia by Germany, people in England and Poland got very concerned. Therefore negotiations between England and Poland started and a pact of guarantee was reached.

On the basis of this statement by Churchill and other important British statements, whereby England intended to build up a coalition against Germany, Hitler to counteract this with all his means, became concerned about his own armament situation. Hitler became concerned in a higher degree to increase his own armaments and to consider strategic plans.

For these reasons I consider Churchill's statements extraordinarily important and therefore I ask this witness be called.

SIR DAVID MAXWELL-FYFE: I have stated my point. My Lord, I do not thin I can add to it.

THE PRESIDENT: The Tribunal wouldlike to have Dr. Horn's observations, which they have only heard through the microphone, in writing on this subject

DR. HORN: As the next witnesses I name Lord Londonderry, Lord Kemsby, Lord Beaverbrook and Lord Vansittart. These witnesses have already received interrogatories.

SIR DAVID MAXWELL-FYFE: These witnesses are being dealt with by interrogatories and we make no objection to the interrogatories.

DR. HORN: As the next witness I would like to call Admiral Schuster, last address Kiel.

SIR DAVID MAXWELL-FYFE: We object to the calling of Admiral Schuster. Grounds for his being asked for are that he took part in the negotiations which led to the German-English Naval Treaty of 1935. Apparently the point that is desired to be made is that the treaty was concluded on this defendant's initiative.

The Prosecution submit that that point is irrelevant; that the

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negotiations before the treaty are irrelevant, and the treaty is there for the Tribunal to take judicial notice of and from which my friend can found any argument which he desires.

But in general, the Prosecution wish to state that going into negotiations anterior to old standing treaties would be an intolerable waste of time when there are so many vital issues before the Tribunal.

DR. HORN: We are discussing during this trial the problem of planning and preparations. In this connection it is certainly not unimportant to hear evidence as to what the German Government and especially Ribbentrop had planned and prepared at that time.

This planning and preparation which at that time through negotiation led to the agreement, is of further importance than just the conclusion of that naval treaty. The treaty was considered by von Ribbentrop, and Admiral Schuster can bear witness to the fact, was considered by him the first cornerstone in a close treaty between England and Germany. To prove these intentions clearly to the Tribunal and thereby to explain the policy of the defendant von Ribbentrop, which he pursued at that time, I consider this witness important and essential and I ask Sir David to modify his position.

SIR DAVID MAXWELL-FYFE: I am afraid I cannot. My colleagues and I have considered this matter very carefully and I have put our general position as to pre-treaty negotiations, especially as to treaties of long standing and with the greatest desire to be reasonable to help Dr. Horn, I am very sorry I cannot at this point accede to his request.

GENERAL RUDENKO: Mr. President, may I speak?

I would like to add to what my colleague, Sir David has stated, the following:

Dr. Horn has requested us to justify our objection. I believe that one of the main divergencies between Prosecution and Defense is the following:

The Prosectuion considers that the Defense wishes to prove that the defendants intended the signing of friendly alliances. Our starting point is that the defendants wished to violate these agreements and that is why it is quite unnecessary to call witnesses who will prove that the defendants strove

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to sign peaceful agreements, and as you very well know, the violations of the treaties and of their intentions to violate these treaties.

THE PRESIDENT: Dr. Horn, in order to test the relevancy of this class of evidence, I should like to ask this question.

Assume that Ribbentrop did want to make agreements with England and did not wish that Germany should make war on England. What relevancy would that have to the allegation that Germany was planning to make war upon Poland?

DR. HORN: Mr. President, to answer that question and to answer it decisively in the sense of the entire defense, I would have to point out all the political and diplomatic relations at the time before the Second World War.

I would not like to go into explanations of such a principal nature unless I had a chance to examine my entire material and could reach one, definite opinion.

I have understood that the Court will want to help us bring witnesses and documents and I have understood that we are only to present reasons for calling the witnesses, and that will be confirmed when they are heard.

Such a principal question as the Tribunal has asked I cannot answer now before I haveexamined all the proof and then I could

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come to an opinion as to the basic line of my defense.

To make it quite clear, I do not wish to prejudice myself here at this moment.

THE PRESIDENT: It is a material question to consider in considering what evidence is relevant. But as you do not wish to commit yourself upon the point, you can proceed.

DR. HORN: The next witness is Ambassador Dr. Paul Schmidt, interpreter at the Foreign Office in Berlin, at this time probably at Oberuersel camp.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal, with regard to the next two witnesses, who are grouped together in the application, they are desired to give evidence of the fact that this defendant asked Hitler five or six times for permission to resign. Again I make the point, which I have made several times to the Tribunal, that if these witnesses can give evidence from the Hitler side of these offers, then there would be no objection.

If they merely give evidence of the fact that von Ribbentrop told them that he had offered to resign, that does not, in the submission of the Prosecution, take it any further. But it may well be that there are letters which went to Hitler which these gentlemen saw and if that is the purpose of their evidence, then the Prosecution feel that it might be relevant, certainly on the question of sentence, if not, though they would reserve all rights to say whether it was a question of guilt of innocence in view of the provisions of the Charter.

I therefore suggest that the reasonable course would be for both these gentlemen to make affidavits of their means of knowledge and that would deal with the point which I have put to the Tribunal.

THE PRESIDENT: Do you suggest a preliminary affidavit rather than interrogatories? Would not interrogatories be wiser?

SIR DAVID MAXWELL-FYFE: I would agree, My Lord, interrogatories which would cover that point of means of knowledge would be the best thing.

I do not think, if I may put it that way, that it would be worth while making two bites at the cherry, if I may use a colloquialism.

DR. HORN: We can talk about the next two witnesses at the same time and I can say that Sir David will give the same reasons against them as he did with

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the other English witnesses.

SIR DAVID MAXWELL-FYFE: I should have thought, my Lord, that my friend and I could agree that they stand or fall with the Tribunal's decision on Admiral Schuster.

THE PRESIDENT: Yes, they are the same.

DR. HORN: Then, I would like to forego the calling of these two witnesses, provided the Court will permit me to call Admiral Schuster.

The next witness is the former Chief of the Protocol at the Foreign Office, Doernberg, at this time most probably interned at Augsburg.

SIR DAVID MAXWELL-FYFE: Again, with great respect, Herr Doernberg's views on the veracity of Count Ciano, in my submission, are not relevant. If we get into calling witnesses to express their views as to the veracity of or other characteristics of the statesmen of Europe, the Tribunal would embark on a course that might well take a very long time and would not lead to any great results and I respectfully submit that this is not a class of testimony or a ground of testimony which the Tribunal should entertain.

DR. HORN: To this point I can say that Count Ciano, through his diary is available to us now, at least on important points, and with regard to the proof which Dr. Doernberg is ready to give us and which we will present to the Court.

The second point is that the statement of Doernberg deals with the matter of an Order. The Russian Prosecution has said against Ribbentrop that he has sold Siebenbuergen for a high Rumanian Order. I would like to either question Mr. Doernberg here about this point or in the form of an affidavit.

THE PRESIDENT: Yes.

DR. HORN: As next witness I name Ambassador Schnurre, who was the chief of the trade political department of the foreign office. I do not know where he is right now. Probably he is a prisoner of the Allies in the British zone.

SIR DAVID MAXWELL-FYFE: With great respect, My Lords, the Prosecution again say that there is no need for a witness to be called to give information that his political chief intended to keep the treaty that he signed. The very grounds that are given for the application seem to me to show that this is really a matter of comment and argument, and we submit that a witness on this

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point is both irrelevant and unnecessary.

DR. HORN: I ask the Tribunal to permit me to call this witness for the following reasons: The fact alone that the witness was informed about the intentions of his chief is not so important for me, but the fact that, on the basis of participation at the negotiations, treaty negotiations, he was also in contant with other important persons, and, therefore, is informed about the background of this treaty, and thereby he can speak about an important point of the Indictment.

THE PRESIDENT: May I ask you again, with reference to the relevance of this evidence, suppose it were true that in August 1939 the German authorities intended to keep the treaty which they made with Russia, that depended or might have depended upon whether England supported Poland in the War which Germany was about to begin with Poland, and it may very well be that the German authorities intended to keep the treaty with Russia in order to keep Russia out of the war with Poland and England. Therefore, how would the intention of Ribbentrop at that time be relevant?

DR. HORN: Mr. President, it is in determining a criminal fact that is important to determine the question of guilt. To what extent did the Defendant Ribbentrop try to keep the treaty as a human being? And it is a different question how far, by political necessity and other forces, he may have been compelled to witness how a treaty was not kept in the sense in which it was meant originally.

THE PRESIDENT: You can pass on

DR. HORN: Ambassador Ritter of the foreign office. He was liaison man with the OKW -- High Command of the Wehrmacht; at this time probably at the internment camp at Augsburg.

SIR DAVID MAXWELL-FYFE: The application for Ambassador Ritter falls into two parts: One raises the point which we have just been discussing with regard to the Russo-German treaty of 23 August 1939, and I have indicated the view of the Prosecution on that. The second point deals with the Defendant's attitude with regard to the treatment of Allied airmen. The position at the moment is that I put in a document which was prepared by Ambassador Ritter, and another document in which Ambassador Ritter said that the Defendant Ribbentrop had approved the memorandum from the

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German foreign office dealing with the proposals for lynching aviators and handing them over to the SD before they could become prisoners of war and entitled to the rights under the Convention.

If it is desired to say that Ambassador Ritter was wrong in stating that Ribbentrop had approved the memorandum, then, of course, it would be a relevant point. But at the moment these documents are in, and I am not quite clear from this for what purpose my friend wishes him called on the second point. If there is any further purpose, then perhaps Dr. Horn will indicate it.

DR. HORN: I just stated the reason why I want to call this witness. The witness will tell us that Ribbentrop was against the treatment of terror fliers, from the fact that Germany left the Convention without notifying the powers which were interested.

SIR DAVID MAXWELL-FYFE: He says he wants to call Ambassador Ritter to contradict the two documents prepared by him, Ambassador Ritter, which are already in evidence. Then I can't make any objection. That is obviously a relevant point, if he is going to contradict his own document.

THE PRESIDENT: Would it be acceptable to Dr. Horn to have interrogatories administered to Ambassador Ritter, or would the Prosecution prefer that he should be called, if he is called, or if he gives evidence of any sort.

SIR DAVID MAXWELL-FYFE: If he gives evidence, the Prosecution would prefer that he should be called, because that is our position. There are two documents in prepared by this gentleman, and if he is going to contradict them, then I suggest he should come and do it in person.

DR. HORN: I leave it to the Prosecution to decide.

THE PRESIDENT: Yes.

DR. HORN: The next witness is the former German Ambassador in Oslo, Norway, von Grundherr, probably at this time in Allied custody.

SIR DAVID MAXWELL-FYFE: Again, I don't want to go into detail. The position is that there is a document before the Court signed by the Defendant Rosenberg in which he says that 10,000 pounds a month were given to Quisling through an arrangement with this gentleman. If Dr. Horn wishes to call Herr von Grundherr to contradict the statement of the Defendant Rosenberg, again I suppose the Prosecution cannot make any objection.

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THE PRESIDENT: Yes.

DR. HORN: Regarding the witnesses which I have listed under points 30 to 34, I can reduce my statement to the fact that I want to call them in order to get information that Ribbentrop, from 1933 to 1939, was seriously concerned about amelioration of relations with France. First of all, the witness M. Daladier, former Prime Minister of France, can testify about these designs. If the Court should decide that these witnesses, or some of these witnesses, could make their statements in the form of affidavits, I will present questions which have to do with the accusation against my client.

SIR DAVID MAXWELL-FYFE: In the submission of the Prosecution, the grounds stated for calling these witnesses are too vague and general to justify their being called before the Court.

When two countries are at peace, the fact that a foreign minister or an ambassador has made statements saying that he hopes the good relations between the two countries will continue, or words to that effect, does not really take us any further; and it would, in the submission of the Prosecution, be a waste of time for witnesses to be called for such a purpose.

Apart from that, the first four witnesses, the Marquis and Marquise De Polignac, and Count and Countess Jean de Castellan, as far as the Prosecution know, have not been in any official position, and there is, therefore, the additional objection that calling people who may be the most admirable people, but are in a position of general friendship, to talk as to what really becomes their view of the state of mind of a Defendant, is not evidence which is relevant or which the Tribunal should entertain.

DR. HORN: With these witnesses the Defense will prove just the fact that the interests of Ribbentrop, considering better relations with France, went further than could be seen by remarks which normally would not be considered to be any more than international courtesy. For this reason, I ask to permit me to call one or the other of the witnesses of this group.

THE PRESIDENT: Dr. Horn, these witnesses seem to raise the same question as to relevance as I put to you earlier on them.

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Assuming that it was the intention of the German foreign office to try to keep France out of any war which Germany was preparing to make, what relevance has that got to the question whether she was about to make an aggressive war upon Poland?

DR. HORN: I would like to prove through these witnesses that it was at least not in the intentions of the Defendant von Ribbentrop to plan wars and prepare wars., but that for decades he has tried to improve relations with the neighboring states around Germany.

The Prosecution, Mr. President, accuses my client also of having planned aggressive war against England and France. If the Prosecution foregoes this point, I, of course, can forego the calling of these witnesses.

THE PRESIDENT: Very well. We will consider those.

DR. HORN: The next witness is Mr. Ernest Tennant, of London.

SIR DAVID MAXWELL-FYFE: I don't know the gentleman, and I have never heard of him, and the only information which is in the application is that he is a member of the firm of Tennant and Company and a member of the Bath Club, and also that he was well known to the Defendant Ribbentrop. The matters for which he is sought to be called are surely the acme of irrelevance. It is submitted that the witness can testify that in the early and middle 30's the defendant asked him to bring him in contact with Lord Baldwin, Mr. MacDonald and Lord Davidson, for the purpose of negotiating with the latter toward paving the way to a good political relations, aiming at the conclusion of an alliance. In 1936 the Defendant was Ambassador to the Court of St. James. Mr. MacDonald had just ceased being Prime Minister in 1935, and was still, I think, Lord President of the Council. Lord Baldwin was then Prime Minister. Lord Davidson, I think, was Chancellor of the Duchy of Lancaster in the same administration. At any rate, he held a comparatively less important office.

But how it can be relevant to the issues before this Tribunal, that at or shortly before that time the Defendant asked a gentleman of no official position whether he could introduce him to the three gentlemen I have just mentioned, I really suggest cannot be stated, and I submit that this witness should not be allowed.

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DR. HORN: Mr. President, in the naming of witnesses, we always come back to the same principal question. By the Prosecution the question is always raised: What can this witness tell us about the fact that Germany has or not not started or caused a war against Poland, while the witness comes from an entirely different country and has nothing to do with Poland, or Polish conditions?

The Defense is of the opinion, however, that the entire policy towards Poland by Germany can only be understood in the framework of the entire European politics. Therefore, the Defense has called for witnesses whom the Prosecution would like to exclude because they can tell about the big picture, and they can give individual cornerstones for the entire framework. Therefore, I also ask for Professor Conwell-Evans of London.

SIR DAVID MAXWELL-FYFE: I have never heard of Professor Conwell-Evans, and he does not appear in the "Who's Who", the British publication showing a very large number of the citizens who have certain grades of distinction or hold certain offices. But I would like Dr. Horn to consider this point, which I respectfully put to the Tribunal:

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Accepting that every word that is stated in this application with regard to Professor Conwell-Evans was said in Court by Professor Conwell-Evans, I submit that it would not advance the case at all, and that the Tribunal would be left in exactly the same position if it had that evidence as it is in at the present moment. After all, the Defendant will be able to give evidence himself and to make his own impression to the Tribunal as to his intentions and as to his own honesty of mind at various times. The submission of the Prosecution is that the evidence of this gentleman would not help the trial at all and is not relevant to any issue before the Court.

THE PRESIDENT: Yes.

DR. HORN: As next witness I name Wolfgang Michel.

SIR DAVID MAXWELL-FYFE: This gentleman is stated to have been a partner in the Defendant's former business. According to the application, it is really desired that he should give his views of the Defendant's general attitude and state of mind. Again, the Prosecution fails to see to what issue he is relevant, but it may be that it would please the Defendant to have affidavits from an old business partner to give his views on the Defendant. If that is desired, the Prosecution would be prepared to consider such an affidavit, but they really must take up the consistent attitude that a witness of this kind is irrelevant, a witness who is going to say, "I have known this Defendant for twenty years; I have been in business with him; and I have always had a high opinion of him." That, in the submission of the Prosecution, does not touch the issues before this Tribunal, and therefore is irrelevant. But, as I say, if my friend cares to produce an affidavit, the Prosecution will consider it with the greatest sympathy.

DR. HORN: I would be satisfied, in the case of the witness Michel, with an affidavit.

Mr. President, I would like to come back to the witness under No. 5, Legation Counsellor Gottfriedsen.

THE PRESIDENT: Are you giving up 38? You didn't deal with 37. You are passing that over, are you?

DR. HORN: I believe that I would hear the same reasons against him as concerning the other witnesses. Therefore, since I believe that the Court is going to decide in principle about the question whether all the background should be submitted by these statements of witnesses, that the court will make

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decision about that. Therefore, I have left out the name of this witness.

THE PRESIDENT: Do you want to go back to No. 5?

DR. HORN: I would like to come back to No. 5. Legation Counsellor Gottfriedsen had the entire official and private handling of finances of the Defendant von Ribbentrop for many years.

Ribbentrop has been accused by many members of the Prosecution that he acquired objects of art and similar things. About this point, Counsellor of Legation Gottfriedsen can make the same decisive statements which will show that these accusations are false. I therefore ask for permission to call this witness.

SIR DAVID MAXWELL-FYFE: My Lord, I have just asked Dr. Horn on this point whether he would prefer Herr Gottfriedsen to von Sonnleitner. I think Dr. Horn says that if there was a question of choice he would.

The Prosecution do not want to be unreasonable. I made my general statement that this group of witnesses, of certain foreign office witnesses, ought to be restricted to three. If my friend thinks that Herr Gottfriedsen will be more helpful, especially on this point, I have no objection to the substitution, so long as some limitation is made in the group of witnesses.

THE PRESIDENT: Would it be satisfactory if interrogatories were administered?

DR. HORN: Yes, in the case of the witness Gottfriedsen.

THE PRESIDENT: Yes.

DR. HORN: My statement regarding the calling of witnesses is thereby finished.

DR. STAHMER (Counsel for Defendant Goering): I have not named some witnesses whom have been called by other Defendants' Counsel, and among these is also Dr. Paul Schmidt. I had the greatest interest to question this witness. Schmidt was the interpreter of Goering; he was present at almost all political negotiations with foreign statesmen. Therefore, I ask also to call this witness and support thereby the application made by Dr. Horn.

THE PRESIDENT: We will consider that, Dr. Stahmer. We will adjourn now for ten minutes.

(A recess was taken)

DR. HORN: Mr. President, may I please bring one other point to the attention of the Tribunal? It has to do with the calling of witnesses.

I named the number of the witnesses because I had to ascertain when the conspiracy in general began, and when my client might have taken part in this conspiracy. The prosecution did not concern itself very exactly with the time at which the conspiracy began, it simply said that it took place some time before the 8th of May, 1944.

Now, if I can call no witnesses as to the years 1933 to 1938, then I must assume that the defendant Ribbentrop, before 1939, was not party to the conspiracy.

I should like this point of view to be taken into consideration when the point is considered as to whether witnesses are relevant.

SIR DAVID MAXWELL-FYFE: It might be helpful, if I indicated quite generally what Dr. Horn has to meet.

The Tribunal will remember that on the 8th and 9th of January I presented the individual case against this defendant. The first point is the time of Hitler's accession to power in 1933. It is the case for the prosecution that this defendant assisted in various ways in that accession. After that, he held various positions in close touch with Hitler.

If Dr. Horn will refer to the transcript of my presentation, he will find that there is detailed, with a note of all the supporting documents, the part which his client played in the aggression against Austria, Czechoslovakia, Lithuania, Poland, England, France, Norway, Denmark, Holland, Belgium, Luxembourg, the Soviet Union, and finally, the United States and Japan. All these matters are set out with the supporting documents, and a reference to them will show exactly what is alleged against the defendant on that point.

Apart from that, there are four matters under Counts 3 and 4 which are specially raised.

First of all, the defendants procured that measures contrary to international law and the conventions should be taken against allied aviators. Again, the supporting documents are in evidence.

Secondly, there is General Lahousen's evidence as to what the defendant said with regard to the treatment of the population of Poland.

Thirdly, there is the defendant's responsibility for putting the various protectors of Bohemia and Moravia in office with unrestricted powers, which resulted in the crimes against the populations of these areas.

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Then there is a similar position with regard to the Netherlands.

The third main category is the treatment of the Jews. Again, there is an American official document, the report

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of Ambassador Kennedy; there is a large Foreign Office statement on the policy towards the Jews; and there is a document showing the preparation for an anti-semitic congress, of which this Defendant was to be an honorary member.

Finally, there is the question of plunder, the evidence given by my Soviet colleague on the Ribbentrop Battalions for the collection of plunder, which was given the other day.

If Dr. Horn will consider these various points, which are practically all collected in the transcript for the 8th and 9th of January, except the last point, I don't think he will find that there is any difficulty in deciding the commencement of these allegations or their detailed and concrete constitution.

THE PRESIDENT: Sir David, the Tribunal would like to know whether the Prosecution alleges any particular date at which the conspiracy started; and secondly, they would like to know whether you contend that Defendants joining the conspiracy after it started are responsible for the conspiracy.

What the Tribunal would like to know is whether a person who joins the conspiracy after it started would be responsible for acts committed by the conspirators before he joined.

SIR DAVID MAXWELL-FYFE: If I might deal with the questions in order, the position of the Prosecution on the question of time is as set out in Count I of the Indictment. The Prosecution say that the Nazi Party was the core of the conspiracy, and that it was an essential part of the conspiracy that the Nazi Party should obtain political and economic control of Germany in order that they might carry out the aims set out in Articles 1 and 2 of the Nazi Party program. That part of the conspiracy started with the emergence of the Nazi Party as a force in German politics, and was fully developed in January 1933. At that time it was the aim of the Nazi Party to secure the breaches of the Treaty of Versailles and the other matters set out in these articles, if necessary by force.

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But, as is stated in the statement of offense under Count I of the Indictment, the conspiracy was not static; it was dynamic. And, in 1934, after Germany left the League of Nations and the Disarmament Conference, the aggressive war aspect of the conspiracy increased in momentum.

It is the case for the Prosecution that from 1935 when conscription was introduced and the Air Force came into being, through 1936 when the Rhineland was re-occupied, the securing of Germany's objectives--the objectives of the Nazi Party--if necessary by aggressive war, became a stronger, clearer and more binding aim.

The position is crystallized by the meeting on the 5th of November 1937, when Hitler declared that Austria and Czechoslovakia would be conquered at the earliest opportunity. That was succeeded by the acquisition of Austria in March, 1938, and the "Fall Gruen" against Czechoslovakia, which originated in May, 1938, to be carried out before October.

From that time the Prosecution say that the plan of aggressive war followed the well-known and clear technique of attacking one country or taking aggressive measures against one country, and giving assurances to the country that was next on the list to be attacked.

From that time the succession and procession of aggressive wars takes a clear course, which I have just mentioned in outlining the aggression against the Defendant Ribbentrop. I may summarize it by saying that the Prosecution submit that the Nazi Party was always engaged in this agreement and concerted action to get control of Germany and carry out its aims, but that the aggression crystallized and became clear from 1934 and the beginning of 1935 onwards.

THE TRIBUNAL (Judge Biddle): Sir David, I would like to ask you a few questions in connection with this.

First of all, you must either know the date when the conspiracy began, or you must not be able to give us the date. Now, is it the contention that the Prosecution does not know when the conspiracy

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began? If you do know, would you tell us?

SIR DAVID MAXWELL-FYFE: The conspiracy began with the formation of the Nazi Party.

THE TRIBUNAL (Judge Biddle): And what was that date?

SIR DAVID MAXWELL-FYFE: 1921.

THE TRIBUNAL (Judge Biddle): 1921?

SIR DAVID MAXWELL-FYFE: Yes.

THE TRIBUNAL (Judge Biddle): Now, was the conspiracy to wage aggressive war begun on that date?

SIR DAVID MAXWELL-FYFE: Yes, it was begun in this way. Hitler had said, "I have certain objectives, one of them being to break the Treaty of Versailles--which means also breaking the treaty of friendship with the United States which has the same clauses--and I shall attain these objectives, if necessary by using force." That was always one of the beliefs and aims of the Party.

Now, if people agree to commit an illegal act, or a legal act by illegal methods, that is, ipso facto, the committing of the offense of conspiracy. Conspiracy is constituted by the agreement, not by the acts carrying out the agreement. Therefore, in that way the conspiracy starts in 1921. But, as Mr. Justice Jackson made clear in his opening, and as I have repeated this morning, the aims, and more particularly the methods by which the conspirators sought to achieve these aims, grew and acquired particular forms as the years went on. They appear to have acquired the special form and to have decided on the method of breaking the Treaty of Versailles in 1934 and bringing that to fruition in 1935.

I am not seeking to avoid answering the question of the learned American Judge, but I am putting, in summary form, exactly what is stated in both the statement of offense and the particulars of offense under Count 1, and I hope that I will not be thought to be avoiding the question. I am not doing that. I am trying to put it in the clearest and most accurate language.

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THE TRIBUNAL (Judge Biddle): Well, I wouldn't ask you except to clarify the matter in my own mind, Sir David. Let me ask you a few more questions.

The conspiracy to commit crimes against humanity -- was that begun in 1921?

SIR DAVID MAXWELL-FYFE: To the extent that a general readiness was adopted to use all methods, irrespective of the rights, safety, and happiness of other people, it was commenced with the start of the Nazi Party. Ruthlessness and disregard for the rights, and safety and happiness of others was a badge of the Nazi Party program, in so far as the rights and happiness of others might interfere with their aims, from the very start.

Again, the translation of the into practical methods developed as the years went on, and in a period well before the war -- Mr. Biddle will not put it against me that I should not remember exact documents in an answer straight off the rule to his question, but well before the war --there will be found again and again in the speeches of Hitler to his associates that utter ruthlessness and disregard for non-German populations should be employed. That is the foundation of the war crimes and crimes against humanity, and it was initiated and grew in the method which I have stated.

THE TRIBUNAL (Judge Biddle): Did you answer the President with respect to the question of whether the conspirators joining later were responsible? If that were true, then this defendant would be responsible for acts running back to 1921.

SIR DAVID MAXWELL-FYFE: Well, there are two legal conceptions which have to be borne in mind in considering that point. I can only speak with knowledge on the law of England, but I understand that the law of the United States is very much the same.

In England there is a common law offense of conspiracy. There are also certain statutory offenses, but there is a common law offense of conspiracy. The gist of that offense is, as I have already stated, entering into an agreement to commit an illegal act or a legal act by illegal means. As far as a conviction for conspiracy per se is concerned, there is no doubt about the law of England. If someone joins a conspiracy at a late state, a conspiracy to do any illegal act, he can be convicted of conspiracy to do that act however late he joins.

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The usual analogy, with which I am sure the learned American Judge is familiar, is that of a stage play. The fact that a character does not come in until Act 3 does not mean that he is any the less carrying out the design of the author of the play to present the whole picture which the play embraces. It is a very useful analogy because it shows the position.

That is one aspect of the law, and on that there is no doubt at all.

The other aspect of the law is as to how far those who act in consort to commit a crime are responsible for each other's acts, that is, irrespective of the substantive offense of conspiracy. If one may take an example, a highly fantastic one but I think it raises the point, assume that you had a conspiracy on the part of road operators to wreck railway trains, and a number of road operators agreed in December to wreck a train on the first of January, and to wreck a further train on the first of February. Between the first of January and the first of February, another road operator joins the conspiracy. I hope I have got rightly the point in My Lord's mind and in the mind of the learned American Judge. Then, there is, as far as I can see, some doubt as to whether that road operator would be liable for a murder committed in the wrecking that took place on the first of January.

I hope I have made my point clear. I am postulating someone who joins a conspiracy on the 15th of January, after the first wrecking has been carried out, during which someone has been killed, and therefore those who consorted with regard to the first wrecking are guilty of murder. But as to the person who joins after that, there is some doubt as to whether he acquires retroactive responsibility. In English law, it would appear to be at least doubtful. It certainly is arguable that in American law he would, as I have been told the decision.

THE TRIBUNAL (Judge Biddle): I think you have made that very clear, Sir David, but what I am getting at is what the Prosecution claim in this case.

SIR DAVID MAXWELL-FYFE: I am very sorry if I have been theoretical, but it has been rather a difficult point, and I wanted to relate it to the law with which I am most familiar.

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With regard to the present case, the Prosecution say that the defendants do become responsible for the consequences of acts done in pursuance of the conspiracy. It is rather difficult to speak entirely in vacuo in the matter, but if one may take, for example -- again I speak from memory -- the defendant Speer,

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who comes on the scene rather late, if my recollection is right, he then becomes Minister for Production and Armaments and makes the demands for the slave labor which were fulfilled by the defendant Sauckel.

In the submission of the Prosecution, there would not be any difficulty in convicting the Defendant Speer on all counts, assuming that the Tribunal accepted the evidence of the Prosecution. By his actions, he has conspired to commit a crime against peace; he has joined and entered into the conspiracy to carry on aggressive war; he has taken part in the waging of aggressive war by making the demands for the slave labor; he has instigated a war crime, namely the ill-treatment of populations of occupied countries; and also, by instigating and procuring the action of the defendant Sauckel, he has committed crimes against humanity in that he has participated in actions which are condemned by the criminal law of all civilized countries; and probably -- I am speaking from memory now -- these actions have taken place in countries where it is arguable whether they were strictly occupied countries after an invasion, as in Czechoslovakia.

On the method in which our indictment is drawn, there is no difficulty, the Prosecution submit, in convicting a defendant who emerges in evidence at a later date on each of the counts.

THE TRIBUNAL (Judge Biddle): Just one more question and then I am through. You understand I am asking these questions only in performance of what we are doing to determine what witnesses should be called, and therefore the year 1921 as the beginning of the conspiracy becomes a year obviously not remote in time when we consider witnesses. Would that not follow?

SID DAVID MAXWELL-FYFE: Not--

THE TRIBUNAL (Judge Biddle): Not remote in time with relation to the conspiracy.

SIR DAVID MAXWELL-FYFE: No, it is part of the particular indictment.

DR. HORN: Mr. President, may I make some remarks in answer to Sir David Maxwell-Fyfe.

I am reading what is substance in the general accusation as regards the conspiracy. The general accusation states that the definitive point of time from which one could depart is any time before the 8th of May, 1945.

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The Chief American Prosecutor said in his opening statement that the Party program in itself is a program of '21, later revised, and these points of the Party program in so far as these goals cannot be pursued through war. Now, if we examine these goals and suppose that they are pursued by war, it is first dubious from what point of time on these actually became the goals of the party, and both the Defense and Prosecution must prove that from that point of time one, the pursuit of these goals was to take place in the form of war.

It can further hardly be contested that as regards planning war, only a very few people, and perhaps only one person, know of it.

Now, in the case of the various defendants, as well as my own client, the times at which they joined are varied, and also the times at which they came in touch with the Party itself. Some of them were simply Party members, and we must consequently assume, as the Prosecution does, that the Party program was also their own program.

Now the question arises for the defense above all, and for the whole conduct of the defense. When can the individual defendant be considered to have entered into the sphere of those who knew that the goals could only be pursued by war, which he did not know before that time and which he had previously supposed were to be pursued without recourse to war. Was Ribbentrop a member of the innter circle of the conspiracy? Before 1932 was he in touch with Party policy? Was he, as ambassador, aware of the conspiracy, or was he only party to such at a later date and only found out at this later date that the Party intended to pursue its goals through war? From the earliest time in which the defendant came in touch with the party, it is assumed by the Prosecution that from that time on he was a member of the conspiracy.

If I may refer to what Sir David said, he stated that the conspiracy began in the year 1921. It is my task to prove through witnesses that my client, for example, until the year 19[illegible] was pursuing peaceful aims. I must

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do so in order to refute the contention that he was preparing a war or had anything precisely to do with plans for formulation of war.

From this point of view, I ask the Tribunal to permit the calling of the witness that I mentioned in my brief. I state explicitly that this discussion has not answered the question: When did the conspiracy begin?

SIR DAVID MAXWELL-FYFE: My Lord, I don't want to repeat any general argument. My desire is that Dr. Horn should know what case Ribbentrop has to meet, and I have already stated that, but I want to make it quite clear.

According to the entry in Das Archiv, Ribbentrop entered the service of the Nazi Party in 1930, and between 1930 and January 1933 was one of the instruments and vehicles by which the accession of the Nazi Party to power took place. That semi-official publication says that some meetings between Hitler and von Papen and the Nazis and representatives of President von Hindenburg took place in his house at Bergenthalen. That is the first point. It is quite clear and it is all set out in the transcript.

The second stage is that he held certain offices between 1934 and 1936 that show that he was an important and rising Nazi politician and negotiator in the realm of foreign affairs. In 1936 he justified the action of Germany in breaking the Versailles Treaty. The defendant justified it before the League of Nations. Therefore, he has to meet that point.

In the same year he negotiated the Anti-Comitern Pact. He has to explain that.

From that time onwards, there are a succession of German documents, all referred to in the transcript for the 8th and 9th of January, which show exactly the part this defendant played in ten sets of aggression against ten separate countries.

I respectfully submit to the Tribunal that that is a perfectly clear case which this defendant has to meet. There is

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no doubt about it at all.

I have already summarized the case on the war crimes and crimes against humanity. Again Dr. Horn will find it dealt with, with every document mentioned, in the transcript for the 9th of January.

I respectfully submit that whatever else may be said, the particularity and clarity of the case against the defendant Ribbentrop is manifest.

DR. HORN: Mr. President, in my defense I have referred to the statements orally made by Sir David. I have not only taken the point of view of refuting these individual points, but I must now return to what Sir David just said.

As regards all of these points that Sir David has just brought up, I must consider them from the point of view of the conspiracy, for Ribbentrop, according to the statement of the prosecution, was a member of this conspiracy, and we have yet to answer the question: When did this conspiracy begin?

I must emphasize again that for my client I can refute that participation in the conspiracy began in the year 1932, contrary to the assertion of the Prosecution, and I should like to have documents and witnesses to prove that then and later he entered into no conspiracy.

THE PRESIDENT: Well now, perhaps you will get on with the documents which you want.

SIR DAVID MAXWELL-FYFE: My Lord, with regard to the documents, I have had the opportunity of discussing it informally with Dr. Horn, and I understand that with regard to Documents 1 to 14,

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Dr. Horn really wants these books as working books which he can read and use and, if necessary, take extracts from to illustrate his argument and point at that time. Now, that is a matter of course to which we make no objection at all. I have consistently taken the view that there should be no objection to any book for working purposes for the Defense.

What I want to ask is this, that if Dr. Horn or any otherdefense counsel wishes to use an extract from a book when it comes to presenting his case, he will let us know what the extract is and, if necessary, for what purpose he is going to use it. I say "if necessary" because in many cases it will be quite apparent for what purpose, but in some cases it may have special significance, and if they let us know, then any question of relevance can be argued when the matter is produced in court.

THE PRESIDENT: But that seems to me to be necessary in order that the documents should be translated.

SIR DAVID MAXWELL-FYFE: Quite; yes.

THE PRESIDENT: I mean that the part of the book or part of the document which Dr. Horn wants to use should be translated.

SIR DAVID MAXWELL-FYFE: But as far as providing the defense with working copies, any cooperation that the Prosecution can do in that way they will gladly do. That is a matter on which we should be anxious to help.

The last five documents named fall into rather a different category. I haven't discussed these with Dr. Horn, but I respectfully submit -- and it is the united view of the prosecution -- that complete files of newspapers will be difficult to justify as evidence before the Tribunal, but again, if Dr. Horn wants them for matters of reference, then it just becomes a question of possibility.

I am not sure with regard to these whether it is desired to use them or whether it is merely desired to have them to refer to. I don't know anything about No. 19, the withdrawn number of the Daily Telegraph, but I suppose the secretariat can make inquiries about that from the proprietors.

DR. HORN: I should like to remark on this last point, Mr. President.

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Now that the trial has proceeded so far, I need these documents as a basis for my case. I should like to ask about the numbers of these newspapers. It is a matter here of four newspapers or three, bound up by months. The numbers of these newspapers will be made available to the Court.

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THE PRESIDENT: What do you say about the withdrawn number of the Daily Telegraph? You haven't yet indicated whether it would be relevant.

DR. HORN: In August, 1939, a statement of the Daily Telegraph was withdrawn because it had the greatest details about the memorandum which the then Foreign Minister von Ribbentrop submitted to the English Ambassador, Henderson, in Berlin. It is asserted by the Prosecution as well that Ribbentrop read this note to Henderson so rapidly that he was unable to understand the essential points of it.

From that number of the Daily Telegraph, under 31st of August, 1939, it will be seen to what extent Ambassador Henderson was in a position to understand Ribbentrop's oral presentation of that memorandum.

I consequently ask that this number of the Daily Telegraph be procured, and I am convinced that the Prosecution is able to get its hands on a copy of this paper, since it has it at his disposal, but it wasnot presented to us.

SIR DAVID MAXWELL-FYFE: My Lord, this is the first time that I have heard of this withdrawn copy apart -- in this application, and it is obviously a point on which I --

THE PRESIDENT: The first time you have heard there was any copy withdrawn.

SIR DAVID MAXWELL-FYFE: I have never heard it except from Dr. Horn that there was a copy withdrawn, and I shall probably have to investigate the matter.

I only want to say one thing, that of course Dr. Horn has just made one point about the question between this Defendant and Sir Neville Henderson. It is a case for the Defendant Goering, as expressed in Dr. Stahmer's interrogatories that the Defendant Goering had caused the contents of this memorandum to be given unofficially to Mr. Dahlerus behind the Defendant Ribbentrop's back. That is the case which he is making in the interrogatories, so that it by no means follows that Sir Neville Henderson's account of the interview was wrong, even if an account of the document had come out.

I don't want to make a point of the memory of Sir Neville, but shall investigate the matter, which I have just heard now for the first time.

DR. HORN: May I add, to clarify this matter for the Tribunal, that the Defendant Goering was only at a much later date in touch with Ambassador Henderson and made the memorandum available to him. It is very important when Henderson received this memorandum and at what time he became aware of its contents, in order to exploit the possibility of making it available to the

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Polish Government at the right time.

Consequently, I urge that it is very important that the copy of the Daily Telegraph be procured.

THE PRESIDENT: Thank you, Dr. Horn.

We will continue with the evidence against the Defendant Keitel.

DR. NELTE (Counsel for Defendant Keitel): Mr. President, permit me to make a few prefatory remarks before I request my various witnesses and documents. I hope that the trial can be materially shortened in duration through this application I am about to make.

You will see from the various briefs submitted that there is one dominant theme that keeps returning, namely, the position of the Defendant Keitel as Chief of the OKW and in his other official functions, his personality and in particular his relationship to Hitler. Further, the clarification of the command relationships in the Wehrmacht.

I shall produce proof to show that this picture is false, that the picture is false which public opinion and the Prosecution have drawn of the personality of the Defendant and of the possibilities of his effectiveness. No name has been so frequently mentioned in the course of this proceeding as that of the Defendant Keitel. Every document that had anything to do in any way with military matters was identified with the OKW and the OKW in turn was identified with Keitel.

THE PRESIDENT: The Tribunal appreciates the general points which you will probably want to argue on behalf of the Defendant Keitel, when you come to make your final speech, but it does not appear to the Tribunal to be necessary that you should do so now.

DR. NELTE: I am doing it in order to explain why I am calling all the witnesses whom I shall call, so that you can form a cumulative judgment. I spoke about this with Sir David on Saturday. I wanted right at the beginning to explain the tenor of my line of proof, so that you would be in the picture, so to speak, on this matter.

THE PRESIDENT: Do you mean, Dr. Nelte, that you will be able to deal with all your witnesses in one series of observations?

(Directed to Sir David) Could you help us, Sir David?

SIR DAVID MAXWELL-FYFE: I think I can help.

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Apart from the witnesses who are Co-Defendants that are mentioned by Dr. Nelte, whom of course the Tribunal has already provided, Dr. Nelte asks for Field Marshal von Blomberg and General Halder and General Warlimont and the Chief Staff Judge of the OKW, Dr. Lehmann. The Prosecution have no objection to these witnesses, because they are called to deal with the position of the Defendant Keitel as head of the OKW.

With regard to the witness Erbe, who is I think a civil servant called on a specific point as to his position in the Committee for Reich Defense --

THE PRESIDENT: Have the interrogatories already been granted?

SIR DAVID MAXWELL-FYFE: Yes; we have always said that interrogatories would be sufficient and he should not be called as an oral witness.

Then with regard to the next, Roemer, whom Dr. Nelte wishes to call to say that the decree for the branding of Soviet Russian prisoners of war was announced by mistake

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and retracted at once on the order of Keitel, that is obviously relevant to one matter in the case, and we don't object to that.

We don't object to General Reinecke, who is called on various matters relating to prisoners of war.

With regard to Mr. Romilly, as long as it is confined to interrogatories which have been allowed, and he is not called orally, we have no objection.

My friend, Mr. Champetier de Ribes, will have a word to say about Ambassador Scarpini. I have asked him to deal with that matter.

Then we come to two witnesses, Dr. Junod and Mr. Patterson. At the moment the Prosecution cannot see how these witnesses are needed in addition to General Reinecke. And of course they would object if the purpose of the testimony is to show that the Soviet Union did not treat its prisoners of war properly. If that is the purpose, they would object.

Then the calling of Dr. Lammers has been granted by the Tribunal.

Then, finally, there are three witnesses who are all called in order to show that at discussions between Hitler and the Defendant Keitel, two stenographers had to be present. The Prosecution do not regard that as a very vital part of the case, and if Dr. Nelte will produce an affidavit from one of these gentlemen, then the Prosecution are not in a position -- and do not desire to -- dispute the point. Frankly, if I may say so, and with the greatest respect, we are not at all interested in that point, and therefore will be content with an affidavit if produced.

If I might summarize -- and I hope I am only trying to help Dr. Nelte -- the only matters which, as far as the prosecution are concerned, require further discussion is the matter of what the French Delegation will have to say about Ambassador Scarpini, and my objection to Dr. Junod and Mr. Patterson, and my suggestion as to an affidavit for the last three witnesses. There is very little between us. If I may say so, with respect to Dr. Nelte's witnesses, on the whole they seem to the Prosecution to be obviously relevant and in that case we make no objection.

There is one rather sad fact with regard to the witness Blomberg, of which I think Dr. Nelte has been informed. I understand that Field Marshal

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von Blomberg is very ill at the moment and cannot be brought into Court, so that I am sure, Dr. Nelte, the Defendant Keitel will be the first to accept some method of getting his evidence which will not necessitate that fact.

DR. NELTE: Thank you, Sir David, for making my task easier.

I should like to add that as regards the witness, Dr. Erbe, I shall inquire in writing, submit questions in writing the answers to which will determine whether or not I ask for him as a witness. As for the witness Junod, I believe I may say that hearing him here is relevant because the Soviet Prosecution submitted evidence that an offer to apply the Geneva Convention was specifically turned down by Keitel. Dr. Junod is to be heard as a witness to testify that on the commission of the OKW department in charge of prisoners of war he tried to get in touch with the Soviet Union in order to assure the application of the Geneva Convention, but that this connection could not be achieved. I believe that if General Reinecke alone is to be heard on this subject, as a witness, one could perhaps object that his testimony as chief of the department in charge of prisoners of war was not sufficient proof, that Reindcke cannot prove what Dr. Junod actually did. Consequently, I ask that this witness be approved.

As far as the stenographic reporters are concerned, I shall submit an affidavit.

As to the Ambassador, Scarpini, I should like to say that he was the constant representative of the French Vichy Government and was particularly concerned with the question of Germany's war prisoners. I believe that that is adequate reason for considering his testimony relevant. To be sure, I did not know his address, and hope that the French Prosecution can help me in that regard.

M. CHAMPETIER de RIBES: We see no objection to hearing the former Ambassador, Scarpini, if his testimony in our judgment can have the slightest bearing on the search for truth; but the reasons which Dr. Nelte gives for the calling of this witness seem to me to demonstrate the complete absence of relevance of his testimony. The former Ambassador, says the honorable representative of the Defense, could demonstrate and say that

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he freely exercised his control in the prisoners' camps and that the camps and that the war prisoners had a man in whom they had confidence, but this we are very willing to grant to the Defense. It is perfectly true that Germany had been willing to have former Ambassador Scarpini -- whom we know was wounded in 1914 in the previous war, and blinded -- could visit the camps of prisoners and, if he could not see, hear the French war prisoners. But the question is not to find out whether the Germans had been willing to have a blind inspector visit the camps. The only question presented by the indictment is whether in spite of the visits of these inspectors and in spite of the presence of a man of confidence in the camp, there did not occur in these camps acts contrary to the laws of war. On this point former Ambassador Scarpini could surely give no answer, for nothing obviously happened before him in his presence. This is why the French prosecution considers that the testimony of former Ambassador Scarpini would shed no light in this search for truth.

DR. NELTE: It was not known to me that Ambassador Scarpini was blind. It was not he himself, but rather the delegation of which he was head, that made inspection tours of the prisoner-of-war camps. It is certain that in these prisoner-of-war camps events took place that were offenses against the Geneva Convention, but the question at issue here is that the Defendant Keitel and the OKW, as the highest authority, did all that, or attempted to do that which in this function as highest authority they had to do.

The OKW had no command authority over the individual camps. It had only to give the regulations as to how the prisoners of war were to be treated and had to take care that the protecting powers had opportunity to visit the camps.

THE PRESIDENT: Would interrogatories be satisfactory, supposing we thought it proper to administer them to Mr. Scarpini?

DR. NELTE: An interrogation in Nurnberg? Could Ambassador Scarpini be heard in Nurnberg?

THE PRESIDENT: I was asking whether interrogatories would be satisfactory. I imagine Mr. Scarpini is not in Nurnberg. Written interrogatories, I mean, of course, where I have mentioned them.

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DR. NELTE: I should like the written affidavits, which I should like to submit. Will they suffice? For, I assume that Ambassador Scarpini is to be interrogated in writing.

THE PRESIDENT: Yes, in writing. Will that be satisfactory to you, Mr. de Ribes?

M. de RIBES: Yes, that will be quite satisfactory.

THE PRESIDENT: I think perhaps we might adjourn now, Dr. Nelte, until a quarter past two.

(A recess was taken until 1415 hours).

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Official transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 25 February 1946, 1415 to 1700, Lord Justice Lawrence presiding.

THE PRESIDENT: I think, Dr. Nelte, you had really finished with your witnesses, had you not?

DR. NELTE (counsel for defendant Keitel): I believe that is right, but I must make some general reservations on what I may have to say after the end of the Russian case and whether I will have to call for one or two other witnesse: I would merely like to ask one or two questions of the Tribunal with reference to the documents.

THE PRESIDENT: Certainly.

DR. NELTE: Those documents which interest me with reference to Keitel. The Tribunal knows the main line of my defense, and so as to prove errors which have been made by the Prosecution, in particular with reference to the jurisdicti and responsibility of the OKW and the Defendant Keitel, which has often been mistaken by the Prosecution, I can refer to a very large number of documents presented by the Prosecution.

I am under the impression that I may not have to submit these documents as evidence. These documents are already in the possession of the Tribunal, and I request your examination and decision regarding the necessity of my quoting such documents in my presentation, without it being necessary to quote them in detail or to submit them judicially.

As reason for this application, I should like to draw the attention of the Tribunal to the fact that after the Tribunal has been informed about the structur of the German army and the jurisdiction of various departments, it will be able to decide for themselves which of the documents which have been presented by the Prosecution can be regarded as evidence regarding the responsibilities of the defendant Keitel and about such documents which are not suitable for that purpose

Furthermore, I am convinced that the Tribunal, in connection with its findin will examine a documents carefully, even so far as the Defense are not presentin such document, and if you will consider the very large number of documents, of

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which there are several thousands, the Tribunal will no doubt realize that I can not quote all the important documents completely in my presentation. That is question Number One.

Furthermore, I should like to put another question, a very important question regarding my presentation which is probably of general importance.

During the session of February 1, 1946, the French Prosecutor made the following statement, and I quote:

" The fourth and last chapter will have the following heading: 'The Administrative Organization'. I can state that the French delegation has examined for the Fourth Chapter more than 2,000 documents, and I am referring to the German original documents. Of those, approximately 50 were retained."

After the principal statement of the American Chief Prosecutor, there appears to be no doubt that these 50 chosen documents are only important from the point of view of implicating the defendant. On 11 February, if I remember correctly, I addressed myself to the French Prosecution with a request to place at my disposal all the remaining 1,950 documents, so that I could examine them. I mean those documents which the French Prosecution did not use.

Up to now, I have remained without any reply to this request. The Tribunal will, no doubt, appreciate the difficulties of my position. I know that there are documents which contain, no doubt, a number of facts useful for the Defense and yet I can not quote these documents in detail.

I beg the Tribunal, therefore, to make a decision in this respect -- that the Prosecution should place at my disposal those documents which are in their possession.

THE PRESIDENT: With reference to these particular documents that you are asking for, are you going to say anything about them?

DR. NELTE: I do not know the contents of these documents. I only know that the French Prosecution --

THE PRESIDENT: Well, if you wish to deal with that now, I will ask the French Prosecutor to answer what you have said.

DR. NELTE: Certainly, it is entirely up to the Tribunal to decide on that question in a closed session or to make a decision right now.

THE PRESIDENT: Well, I think we had better hear from the French Prosecutor now.

M. DUBOST: A certain number of documents were doubtful, and they were in our hands at the time that we were beginning to prepare our prosecution. We have eliminated all documents which could not bear serious critical examinatior We carefully cited all the documents and threw out all those that were considered to be insufficient proof. Those documents which are referred to by my colleagues have been put aside, or, if I recollect correctly, three or four which I can not determine at the moment have been thrown our. In these conditions, we have not put at the disposal of the Defense 1950 document We handed over to the Court and to the Defense 500 documents which in themselves seemed to us to have sufficient probitive value.

It would seem to us that the Defense would be asking the Court to ask to have handed to them various documents which have been thrown out by themselves as not having sufficient probitive value. As far as I am concerned, I must oppose this application because the result would be to take into account documents which did not conform to the standards that we had set.

THE PRESIDENT: Yes, but, M. Dubost, the position is this: There were a large number of documents which the Counsel for the French Prosecution said that they had examined, and the French Prosecution, in the exercise of their discretion, thought it unnecessary to refer to more than a certain number of them, but it is only the French Prosecution who have exercised their discretio about those documents, and what Dr. Nelte is asking is to see them for the purpose of seeing whether there as anything in the documents which assisted his case. Would the French Prosecution have any objection to that?

I mean it may be that some of the documents are no longer in the possessi of the French Prosecution, but those that are in their possession, would the French Prosecution object to Dr. Nelte seeing those?

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M. DUBOST: May I remind the Tribunal that the documents which we rejected were not rejected as useless to the debates, but as not presenting sufficient guarantee as to their origin or as to the conditions under which they were obtained and as to their probative value. The Tribunal will no doubt remember that a certain number of these documents were thrown out by the Court itself. Those that they did not take up are of the same character as those documents which were thrown out. We did not bring them forward because we could not tell you where, how, and under what conditions they had been discovered. For the most part, they are documents that fell into the hands of combat troops during the war, and under the terms of jurisprudence laid down by the Tribunal do not offer sufficient guarantee; and in the state in which they are at present in my possession I am ready to communicate them to Defense Counsel, but I do not think they will attach any higher value to them than I did.

THE PRESIDENT: That may very well be. I think that all Dr. Nelte wants is to see any documents which you have brought to see whether he can find anything in them that he thinks may help the case of the Defendant for whom he appears, and I understand you wouldn't have any objection to his doing that.

M. DUBOST: I have no objection in principle. I would only answer the Defense Counsel that those documents have been rejected partly by the Court when I presented them.

THE PRESIDENT: Well, of course, it wouldn't apply to documents which have been rejected by the Court. Well--

Very well. We will not decide the matter now. We will consider it.

DR. NELTE: Would the Court announce their decision regarding the first question which I brought up, namely, whether it is sufficient that I refer to documents which have been presented by the Prosecution without submitting them myself for judicial notice of the Court?

THE PRESIDENT: Yes, Sir David?

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SIR DAVID MAXWELL-FYFE: On that point I would like to support Dr. Nelte's suggestion. If a document has already been put in, I should have thought it was right and convenient that Counsel for the Defense could comment on it without putting it in again and should have full right of comment.

THE PRESIDENT: I think that I have said on a variety of occasions that any document which has been put in evidence, or a part of which has been put in evidence, can, of course, be used by the Defense in order to explain or criticize the part that has been put in. It may be that as a matter of informing the Tribunal as to the document, it may be necessary to have part of the document which has not been put in evidence put in again in order that it may be translated.

SIR DAVID MAXWELL-FYFE: I do not know whether it would be convenient if I indicated to Dr. Nelte the views of the Prosecution on his list of documents, or whether he would like to develop it himself. I can quite shortly do that if it would be convenient.

THE PRESIDENT: I think it would shorten things if you would.

SIR DAVID MAXWELL-FYFE: A considerable number of the documents in the list fall into that category which has just been mentioned. Documents 3 to 9, 17 and 29, 30 and 31 all appear to be in, and therefore Dr. Nelte may comment in accordance with your ruling.

Then there are a number of documents which are affidavits, either of Defendants or intended witnesses: documents 12, 13, 22, 23, 24, 25 and 28.

The Tribunal may remember that in the case of the witness Dr. Blaha, my friend, Mr. Dodd, adopted the practice of asking the witness, "Is your affidavit true?" and then reading the affidavit to save time. The Prosecution have no objection to Dr. Nelte pursuing that course, should he so desire, but, of course, where a witness is going to be called as a witness, he will have to verify his affidavit on oath, in the submission of the Prosecution.

THE PRESIDENT: One moment. You mean that, if the witness is

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here, you have no objection to Dr. Nelte reading the affidavit and the witness being then liable to cross-examination?

SIR DAVID MAXWELL-FYFE: The witness will say, "I agree; I verify the facts that are in my affidavit."

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: I think it might save considerable time in the examination-in-chief, and we should all be prepared to co-operate in that.

THE PRESIDENT: Then, is Dr. Nelte agreeable to that course? Is that what he means?

DR. NELTE: Yes, absolutely.

THE PRESIDENT: Possibly, Sir David, if the affidavit were presented to the Prosecution, they might be able to say that they did not wish to cross-examine. That would save the witness being here or being brought here.

SIR DAVID MAXWELL-FYFE: It might be in the case of Dr. Lehmann. I think all the other cases are either Defendants or witnesses with regard to whom there are certain points which the Prosecution would like to ask.

Then there are three documents which there are no objections to their being used: 18, 26 and 27.

That leaves a number of documents as to whose use I am not quite sure at the moment, but it may be that Dr. Nelte will explain how he wishes to use them, and that may remove the difficulty of the Prosecution. If the Tribunal will be good enough to look at 1 and 2: 1 is an expert's opinion on state laws concerning the Fuehrer State, and the importance of the Fuehrer order, and document 2 is an order of the Fuehrer number 1.

If it is desired to use these so as to controvert Article 8 of the Charter, the Prosecution will object.

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That is a question of superior orders.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: If they are only used to explain the background as a matter of history, that may be a different matter.

Now, the next one is Document 10, --

THE PRESIDENT: Before you pass --

SIR DAVID MAXWELL-FYFE: -- a need for a ministry of rearmament, taken from ---

THE PRESIDENT: Even so, Sir David, in your submission, ought we to accept the opinion of an expert on such a point?

SIR DAVID MAXWELL-FYFE: No, Your Honor. We don't at all. I am afraid that my second remark really applied to the order of the Fuehrer. That might be used as a background or it might be used for purposes of mitigation or explanation of how a thing took place, but I respectfully agree that the expert's opinion on state laws cannot be used with regard to the jurisdiction of the Tribunal. Of course, the law of any other state may be a question of fact as far as the Tribunal is concerned just as it would be a question of fact in an English court! "What is the law of another state?" As I say, I want to reserve emphatically the position of Article 8 with regard to these two documents.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: Now, Documents 10 and 11 dealt with rearmament in other countries. I don't want to prevent the defense using illustrations, but again I reserve the position most emphatically that rearmament in other countries cannot be an excuse for aggressive war and could be irrelevant on that point.

Now, 15 and 16 refer to books by Major General Fuller and Major General Temperley, who are both ex-officers, who were journalists during this period. As far as any question of fact that is stated in these books, if Dr. Nelte will let us know what the passage is, we shall see whether we could admit it, but the general views of Major General Fuller and Major General Temperley we would submit to be irrelevant.

Then, 19, 20, and 20 are books about Austria. Again the Prosecution reserves the position that the earlier state of opinion in Austria with regard to an anschluss is irrelevant when considering the question of the

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aggressive action in breach of the Treaty of 1936 which took place in 1938. I think, My Lord, that I have now dealt with all the documents and, as I say, they fall into these four groups; with regard to three of which there is nothing really between us in principle and, with regard to the fourth, the Prosecution wants to reserve these various points which I have mentioned. Again I want to make clear that the Prosecution does not object to Dr. Nelte obtaining any of these books for the purpose of preparing his case, but we want them to make clear at the earliest opportunity what their position is with regard to their use.

DR. NELTE: With reference to the first three categories, I am glad to say that we agree and I can, therefore, refer to that category which begins with the two documents, Nos. 1 and 2. One of them is important principle questions in this trial which to start with appears to be an entirely legal problem. It is the question of the so-called Leader State (Fuehrerstaat) and Leader Order (Fuehrer Order). This question has, however, other important actual significance in this trial since, for instance, the defendant Keitel, because of his exposed position, was to a very considerable degree subject to the effect of this Leader State. He acted because he was continuously closely attached to the incarnation of this leadership principle, none other than Hitler. It isn't as if Article 8 of the Charter would be uneffected by this. Evidence would merely have to be collected for the fact, I assume, that Article 8 cannot be applied to this particular case.

Regarding the Leader Order No. 1, Document No. 2, the Tribunal will be able to judge whether this has importance as evidence at the time when the Tribunal hears this Order.

This is the warning in this Order: Nobody must have knowledge of secret matters which do not fall into his own sphere of influence and his tasks; nobody should hear more than he must know for a fulfillment of the tasks which are given to him; nobody must know earlier about facts than is necessary for the carrying out of the tasks given to him; no one should pass on secret matters earlier than it was absolutely necessary to other departments under his command.

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Now, regarding Document 1, the expert opinion on the Leadership State, it seems to me that this, in connection with Fuehrer Order No. 1, should serve as evidence for the fact that a conspiracy in the sense of the Prosecution is not possible in that conception. That is the reason why I request the Tribunal to admit these two documents. Document No. 10 and Document No. 11, and to a certain degree Document 16, are submitted because we are trying to prove that the principles which the defendant Keitel as a soldier in the German Army considered good and proper, namely, rearmament up to the point of an expected position of Germany amongst the other nations;; that these principles were not only a requirement for a German, but that even foreigners and important persons at that did understand that and approved of it. This part of my case will be served by the submission of an Article of 2 British, a French and an American author of military standing, military personalities who seem to me to have a name as military writers. Also in this category falls the article "Total War", written by Major General Fuller, which is my Document No. 15, as well as the book of the British Major General Temperley, "The Whispering Gallery of Europe". Mr. Fuller, for instance, writes in his article:

"It is nonsense to state that he, Hitler, wanted the war. A war could not bring him the reincarnation of his nation. What he needed was an honorable, secure peace."

This concerns just that piece of evidence which proves that the intention of the planning of aggressive wars was contradictory if one considers the intentions of Hitler and the other National Socialists as honest.

The defendant Keitel did believe in the honesty of these statements and for the purpose of proving that, he wishes to refer to the opinion of important persons abroad whose names have great significance.

I believe those were the documents which were the cause on the part of the Prosecution to state their objections.

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THE PRESIDENT: You mentioned Documents 19 to 21, which documents were meant to reveal a certain state of opinion in Austria.

DR. NELTE: Yes. Those documents -- No.19 dealing with the question of the anschluss of Austria and its cultural and economic difficulties; and Document 20, the way toward the anschluss and the question of the anschluss in the international press. These documents are meant to prove that the defendant was entitled to assume that the vast majority of Austrians desired that Austria should join Germany. These articles and memoranda of the Austrian-German Peoples Union, the president of which was the Social Democrat member of the German Parliament, Loewe.

THE PRESIDENT: That concludes the documents, does it not?

DR. NELTE: I should like to make an additional application to the Tribunal, which refers to documents which I have been unable to mention earlier since they weren't mentioned until the session of February 22nd. This application of mine I shall now submit. It refers to eleven documents, all of which were presented during the session of Friday and which were evidence of participation of Keitel in the crime during the retreat and slave workers. From the contents of these documents which were submitted by the Prosecution, it becomes apparent what I have already submitted to the Tribunal, namely, that a large number of the accusations of the Prosecution are due to the fact that every document which in any way dealt with military matters was simply credited to the OKW and Keitel.

THE PRESIDENT: Dr. Nelte, as I understand it, all these documents have already been put into evidence.

DR. NELTE: Yes.

THE PRESIDENT: Well, then they fall into the category to which Sir David agreed. They could be touched on by you.

DR. NELTE: That is correct, sir.

THE PRESIDENT: Have you made application in connection with them?

DR. NELTE: When I made this additional application I had not yet received Sir David's agreement. Apart from that, it appears to me to be a particularly interesting and convincing case because during one day eleven documents were submitted to the Tribunal, all of which contain accusations

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against Keitel, but all of which proved by their contents that they do not refer to him or the OKW.

THE PRESIDENT: One moment. There is only one other thing that I wanted to ask you. You asked at an earlier stage for the evidence from Ambassador Messersmith and Otto Wettberg and in both cases the Tribunal granted you interrogatories. I don't know whether you are withdrawing your application in respect to those cases or whether you have seen the answers to the interrogatories.

DR. NELTE: I have, in accordance with the suggestions of the Tribunal, sent those interrogatories to Ambassador Messersmith and Otto Wettberg. In accordance with what reply I shall receive from those two witnesses, I shall then submit them or not.

THE PRESIDENT: The application for Otto Wettberg?

DR. NELTE: Yes, sir, but I haven't received them back.

THE PRESIDENT: Very well.

The exhibit No.1, would you explain a little bit more what No.1 is going to be? It appears to be the opinion of an expert witness on the meaning of the Fuehrer precept. Is that what you intend?

DR. NELTE: Yes. It is a legislative article or article on the structure and significance of what is known as Fuehrerstaat (Leadership State).

THE PRESIDENT: Very well.

Yes, Colonel Smirnov.

COLONEL SMIRNOV: May it please your Honors, it is my duty to submit to the Tribunal evidence on the last count of the Soviet prosecutor's statements.

"Crimes against Humanity " are foreseen by Count 4 of the Indictment and by Article 6, and in particular in subparagraph "C" of Article 6 of the Charter.

I will submit the crimes that were committed by the Hitlerites on the territories of the temporarily occupied districts of the Soviet Union, Poland, Yugoslavia, Czechoslovakia and Greece.

"Crimes against Humanity", just as other crimes of the Fascists which

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against Keitel, but all of which proved by their contents that they do not refer to him or the OKW.

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"Crimes against Humanity", just as other crimes of the Fascists which

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have been submitted to the Tribunal by my colleagues, came from the criminal basis of Fascist mentality by the seizing of considerable districts in the East and in the West and by putting into slavery of the population. These crimes were put into effect as a result of a cannibalistic theory of the Fascists.

Moreover, the concept of "Crimes against Humanity" is included in nearly all the crimes of the German Fascists. Thus a major part of probative facts which corroborate the commission by the German Fascists of these crimes has already been submitted to the Tribunal as regards War Crimes against the civilian population.

The criminal trampling under foot by the Hitlerites of the laws and practices of war, as well as the mass extermination of the prisoners of war, are also in themselves very grave Crimes against Humanity.

Moreover, the concept "Crimes against Humanity" is considerably wider in its scope than any of the crimes of the German Fascists, the proofs of which have been hitherto submitted to the Tribunal.

Together with the arrival of German military units and with the appearance of the Swastika on official buildings, the inhabitants of the temporarily occupied Eastern European countries were placed, one might say, in the ante-chamber of death.

The merciless machine of the Fascist state wished to compel them to renounce all that which, as a result of centuries of human development, had become an integral part of humanity.

Thus death hung over them constantly, but on their way to death they were forced to pass through numerous and painful phases, insulting to human dignity, which constitute, in their main features, the charge which we entitle "Crimes against Humanity."

One wished to force them to forget their name by hanging on them a number or by sewing on their sleeves a particular marking. They were deprived of the right to speak or to read in their own tongue. They were deprived of their home and family and were deprived of their country by

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transferring them by force to places distant several hundreds of thousands of kilometres. They were deprived of the right to have children. They were mocked and insulted. Their feelings and beliefs were jeered at and scoffed. And only then were they deprived of their last

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possession, their lives.

The numerous acts of investigation noted only a state of physical exhaustion of the victims of Fascism. They also noted a profound state of moral depression among those people who, thanks to this or that accidental circumstance, succeeded in escaping the Fascist terror.

A long time was needed in order that these victims of German Fascism once again could return to normal conceptions and actions and to the human rules of human society. It is difficult to determine in legal terms this moment of transgression, but in my opinion, it is of the greatest import for the incrimination of the principal war criminals.

I wish the Tribunal to refer to the report which has already been submitted to the Tribunal as USSR Exhibit No. 93. The quotation which I should like now to refer to is on page 10 of the document book.

On page 17 of the Russian text of this report, there is a quotation out of the statement of Jacob Vernic, a carpenter from Warsaw, who was interned during a year in the extermination camp of Treblinka. Sometimes in the German documents it is called "Treblinka 2" and "Treblinka 5", but it is the same camp. It was one of the most terrible points of mass extermination of people created by German Fascism. In my statement I will submit to the Tribunal proof connected with the existence of this camp. This is what Vernic said while presenting to the Polish Government a report on Treblinka, which, as he stated, was the only reason for his continuing to live his pitiful life:

"Awake or asleep I see terrible visions of thousands of people calling for help, begging forlife and mercy. I have lost my family. I have myself led them to death and I have myself built the death chambers in which they were murdered. I'm afraid of everything. I fear that what I have seen is marked on my face. Old and broken life is a heavy burden but I must carry on and live to tell the world what I have seen of German crimes and barbarism."

The persons who came to Treblinka were, as I said, in the ante-chamber of death. But were they alone victims of this fate? An analysis of probative facts connected with the crimes of the German Fascists were

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irrefutable testimony to the fact that the same fate was shared not only by those who were sent to special extermination camps, but all those who became the victims of these criminals in the occupied countries of Eastern Europe.

I wish the Tribunal to allow me to present as proof a short quotation out of the report of the Extraordinary State Commission on the crimes committed in the Town of Orel and Orel District. In the text of this document there is a special report of a famed Russian scientist, a doctor, and president of the Academy of Medical Science, member of the Extraordinary State Commission, Academic Bourdenko. The Tribunal will find this report on page 14 of the Document Book, paragraph 6.

"The scenes," says Bourdenko "surpassed the wildest imagination. Our joy at the sight of the delivered people was obscured by the horror of their expression. This led one to reflect - what was the matter? Evidently, the sufferings they had undergone had identified the concept of life and death. I observed these people during three days; I bandaged them. I evacuated them but their stare of fixity did not change, and something similar could be noticed during the first days on the faces of the doctors."

I will not dwell upon extracts from "Mein Kampf" or the "Myth of the Twentieth Century", which are already known to the Tribunal who are interested in the first place, in the criminal practices of the German Fascist fiends.

I have already said that death constantly hung over the heads of the victims of Fascism. Death could come unexpectedly, together with an appearance at the given point of this or that Sonderkommando, but, simultaneously, death could come for any action according to certain acts which have received the mock title of "German Fascist Laws." I and other members of the Soviet Prosecution have already quoted numerous examples of these terroristic laws, directives of the German Fascists. I do not wish to repeat myself, but I wish to beg the permission of the Tribunal to quote one of these documents as it concerns all the temporarily seized eastern territories. The only justification for their publication of this document was for its author, the defendant Rosenberg; the fact that these temporarily occupied districts were inhabited by "Non-Germans". This document is the

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characteristic item, the best evidence of the persecution of the people for racial or national or political motives. I beg the Tribunal to add this document to the record. The document is USSR Exhibit No. 395. This order was issued on the 17th of February 1942 and is the so-called order supplementing the penal directives for the eastern territories. The Tribunal will find this document on pages 19 and 20 of the document book. I will read this document in full, beginning with paragraph 1.

"The death penalty or, in lesser cases, penal servitude would be inflicted upon those who will use violence against the German Empire or against the authority established in the occupied territories. Those who will commit violence against a German subject or person of German nationality for his belonging to this German nationality; against those who use violence against a serviceman of the German Army or non-military organization, such as the German police, including the auxiliary forces, the labor forces, the labor service of the German authorities or its institutions, the organizations of the NSDAP; against those who appeal or incite to disobedience regarding orders or directives issued by the German authorities or who premeditatively inflicts damage to the enterprises, to German buildings or institutions or things which are utilized by the latter or for public use; against those who are accomplices of anti-Germany tendencies or organizationally helps units prohibited by the German authorities; against those who take part in hostile inciting activity and reveals anti-German views or by his behavior diminishes or inflicts damage to the authority or good of the German people; against those who premeditatively commit larceny---"

THE PRESIDENT: Have you read this before?

COLONEL SMIRNOV: I referred to these telegrams, but I believe that it was not yet read into this record.

THE PRESIDENT: Very well.

COLONEL SMIRNOV: It may be that similar orders were read. They may be the orders of Frank or other orders because they resemble this order, but I don't think that this one has been read. I do not find it has been read.

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" --or thereby inflicts damage to the general German interests or to the possessions of the German or a person of German nationality."

Paragraph 2:

"The death penalty and, in lesser cases, penal servitude is also inflicted to those who agree to commit such an action forseen by Paragraph 1; who enters into serious negotiations on that subject; who offers his services or accepts a similar proposal, as well as those who possess accurate information on this action or its intention, when it could still be averted, wilfully abstains from warning prematurely the German authorities of this plot on the part of a certain person."

Paragraph 3:

"A death penalty will also punish those crimes that are not forseen by Paragraphs 1 and 2, if, according to the general German Criminal, Laws and to the directives of the German authorities, it does not entail the death penalty but testifies to particular base convictions or as a particular grave offense of other reasons. In these cases, the death penalty is also permissible regarding the children who have committed these grave crimes."

Paragraph 4:

"If there is insufficient justification for the judging by military courts, their verdict will be pronounced by special courts. This does not concern special instructions issued for the armed forces."

I skip paragraph 5.

This order of Rosenberg's was only one of the links in the chain of crimes committed by the leaders of the German Fascism and directed towards the extermination of the Slav people.

I pass on to the first part of my statement which is entitled "The Extermination of Slav People." In the second part of this statement I will show how this criminal destruction of Slav persons was put into effect. I will quote data from the report of the Yugoslav Government, which is on page 56 of the Russian text or 76 of the document book.

" Apart from the 250,000 Yugoslava who died in battle, the occupants exterminated at least one and a half to two million people, mostly women, children, and aged persons. Out of the fifteen million pre-war Yugoslav

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population, for a relatively short period of four years, almost fourteen per cent of the entire population was exterminated."

In the statement of the report of the Czechoslovakian Government, on pages 36 and 37 of the Russian text, there is proof of a plan for forceful ecpulsion of all the Czechs and the establishment of Germans in Czechoslovakia, which was planned by the Hitlerite criminals. The report quotes statements of Karl Herman Frank, who admitted the existence of this plan and declared that he, Frank, had compiled a memorandum in which he objected to similar plans. I quote excerpts from the statement of Hermann Frank, which the Tribunal can find on page 37 of this report of the Czechoslovakian Book.

"I consider this plan senseless as, in my opinion, the expense created by these measures would seriously impede the live functions of Czechoslovakia and Moravia for various reasons of geo-political transportation, industrial, and other character, and the immediate filing of this empty space by our German colonists was impossible."

In Poland a regime of extermination of Slav population was committed by various methods, among which an important part was played by the driving of people to an extreme state of exhaustion by labor and their subsequent extermination through hunger. The criminals quite consciously envisaged the killing of millions of people by hunger, and this can be proved by a number of document which have already been quoted by me or by my colleagues, namely, the diary of Hans Frank. I will quote a few short extracts out of his document. Here is an excerpt concerning the conference held by the Government on the 7th of December 1942 in Krakow.

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The Tribunal will find this excerpt on page 89 of the document book, first column of the text, last paragraph:

"If the new code-plan is put into effect, this means that in Warsaw and in the neighborhood and its surroundings alone, 500,000 people will no longer receive food."

And here is another short excerpt from the notes concerning the conference held on 24 August 1942. That is an excerpt on page 90 of the document book, first paragraph of the text:

"Dr. Frank: With all the difficulties which you find here relative to diseased workers, and the collapse of their union, you must keep in mind it is much better if the Poles collapse than if the Germans collapse. Let it only be mentioned if the Jews do not die of hunger, we shall be condemning one to two million Jews to die of starvation. This is correct. Of course, if the Jews are not to die from starvation, this will hasten activation of anti-Jewish measures."

Of the third short excerpt concerning a working conference of the political leaders of the Labor Front of the Government General, on 14 December 1942 this Tribunal will find on page 89 of the document book, 2nd column of the text, second paragraph:

"We are faced with the following problem: Will we be able to, beginning from the 2nd of February, to deprive the two million persons who live in this district, two million persons of non-German nationality, food supplies?"

In his preliminary speech, the Chief Prosecutor of the USSR, while speaking of crimes against humanity, referred to notes given by Martin Bormann, and the notes were presented to the Court under Exhibit No. USSR-172

The Chief Prosecutor of the USSR quoted the notes, which the Tribunal can find on page 97 of the document book, last paragraph:

"Similarly the Fuehrer said again, the last German workman, or the last German peasant, will always stand ten percent in economic level, and must stand higher than any Pole."

How was this actually accepted? I would like to show how these statements of Hitler were put into effect by the defendant Frank in the territory of Poland.

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I beg the Tribunal to refer to the original German document. Among the Fascist institutes which carried out the various scientific experiments by the German criminals there was created a special institute which investigated economic life. This institute issued as documentary importance a Polish document for war industry for Upper Silesia. A similar investigation was carried on by this Frank institute for determination of the reason for the ruination of or destruction of Polish workers. We can judge the aims of this investigation by two short excerpts. On page 39 of the original of this document we read -- the Tribunal will find this on page 101 of the document book, second paragraph. I submit this document as USSR Exhibit No.282. This quotation is on page 101 of the document book, third paragraph.

"No humanitarian tendency motivates this investigation."

On page 149 of this document the Tribunal will find this -- on page 101, third paragraph, of the document book. It is said:

"We raise our voices not in defense of the Poles but in order to prevent the military production which must supply the Wehrmacht."

Quoting this short excerpt which characterizes the ideas and which characterizes this investigation, I would like to quote a few excerpts which show the status of the Polish worker and the practical realization by the defendant Frank of these directives of Hitler's. I quote on page 38 of the original copy of the document, which corresponds with page 101 of the document book:

"Information concerning the condition of the Polish population and the opinions after the measures which are to be taken there. The measure agrees on one point, which can be summarized as follows: The Poles are starving. Similar information concerning these conclusions was where one of our informers visited a war production plant during the midday meal. The workers are standing apathetically or sitting, and some of them are smoking. By observation the informer states that out of eighty persons only one had a piece of bread for lunch. The others had no food whatever, and they were all working ten to twelve hours a day."

On the above, on page 502 of this document, which corresponds to page 102 of the document book, is this quotation:

H0069 - 0061

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On the above, on page 502 of this document, which corresponds to page 102 of the document book, is this quotation:

H0069-0062

"Observation made on the factories prove that the portions received by the village workers will show insignificant; that there is not enough food to take with them to work. In most cases the workers do not even have a piece of bread for lunch during the midday. If some of them bring a lunch with themit consists of a meagre coffee and one or two pieces of dry bread, of raw potatoes, and in more than one time they don't even have this meagre pittance, and are satisfied to contain themselves with raw carrots, which they warm on a stove for their work."

I continue my quotation on page 150 of the same document:

"In this connection one must state that on visiting the mines, it appeared that nearly ten percent of the Polish workers which went down to work underground took with them only dry bread, or dry raw potatoes in slices which they then warmed on a stove."

The Institute began its scientific investigation on the number of calories which was received by the Poles in Upper Silesia and compiling them with the number of calories received by the German population. I will not state a large excerpt produced from the document, but will only bring a few short ones to your Honors' notice. I start on page 63 of this investigation in the document, and on page 102, last paragraph of the document book:

"Comparison of the number of calories received by the Poles in Upper Silesia, and the number of calories allocated to the German population, proves that the Poles received 24 percent less than the German consumer, this difference reaching 26 percent on those food ration cards which are received by non-working Poles. For young people fourteen to twenty years old, these differences reach a difference between the Germans and the Poles which reaches 33-1/3 percent. This only applies, however, to this difference with the working young people from fourteen years old. This difference still averages more among the children ten to fourteen years of age but less than compared with that received by the German children. The difference here is not less than sixty-five percent. The special aspect of these underfed young people display quite clearly a difference. In a similar way the Polish children younger than ten years receive sixty percent less than the German children. Thus on the other hand the doctors state

H0069-0063

that the food conditions of the babies are not so unfavorable. It was only varied while the mother feeds the child, as the child gets everything from her, but the under-feeding reacts not on the child but on the mother. Its strength and health, of course, is diminished by its under-feeding."

I continue on page 178 of the original document. It corresponds to page 107 in the document book:

"In all categories the consumer, the Polish youth in comparison to the German youth is in a most unfavorable position. The difference here reaches sixty percent, and even higher."

Extracts from the report of the German Labor Front, which are quoted in this investigation, are also subject to investigation by the Tribunal; on page 76, from the excerpt from the report of the German Labor Front, dated 10 October 1941, after one of the mines of the Poles had been visited:

"It was ascertained that in the various villages, the Polish miners fell from exhaustion. The workers are constantly complaining of stomach pains. The doctors were questioned, and the latter answered that the reason for these pains was inadequate feeding."

I close this description of the physical conditions of the Polish worker which was then done by the German workers from the district, or in the neighborhood, the excerpt which you will find on page 106 of the document book:

"In management of the factories, which is constantly undermined, it is impossible to incite the working people who are underfed and who are incapable of working except by threats of deportation to concentration camps. There must come a day when weakened bodies can no longer be capable of work."

In some documents there is the characteristic of the legal position

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of the Polish worker during the period of German occupation of Poland. This characteristic is of more value, as was stated previously by the authors in th investigation, that no human tendencies whatever motivated it. I began the quotation on page 127 of the document which corresponds to page 110, second paragraph of the Document Book. Quoting:

> "The law does not give a person belonging to the Polish people any right to demand anything in any way. Everything that is granted to the Poles -- only in granting to the Poles is a voluntary gift of the German masters."

The most apparent construction is the law in a legal position as to the Poles when they are not present before the law. Criminal jurisdiction is applied to them only from the point of view of obedience. Application of the law is a task of the police, which decides it at their discretion, and in these cases merely on their own initiative, and in some cases they can submit it to court. There is also an order dated 26 August 1942: "The Polish workers were obliged to pay premiums against illness and accidents, and invalids. It is a deduction out of the salary of the Polish worker which were larger than the deduction from the salary of the German. However, the German worker had some use of this insurance. The Poles were deprived of it, ofthis advantage.

The Tribunal can find the following extract on page 111 in the Document Book, which corresponds to page 134 of the original text:

> "Insurance against accidents. It is organized by trade unions, and is purposely limited so far as the Poles are concerned. The invalidity takes place on a smaller scale than it does for the Germans. When a German loses an eye that is considered thirty percent incapacitated, for the Poles only twenty-five percent incapacitated. Before receiving the premium the Poles must lose 33 1/3 percent of their working capacity."

I continue my quotation on page 135 of the Document, which is found on page 111 of the Document Book:

> "The rights of families of Polish workers are greatly limited. In those families a member of which has a Polish widow, she receives only a premium which is fifty percent less than that of the German; only if she has at least four children to support, or

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if she is an invalid."

The following example is typical of a German widow with three children, she receives eighty percent of the yearly salary of her husband; that out of the annual amount she receives two thousand marks of the earnings of the premium, which is only 1600 marks a year; but the Pole would not receive anything in a similar case.

The German fascist criminals of the war did not only send SS and soldiers to the temporary occupied eastern territories, but the latter were followed by their war specialists who were scientists and consultants in the economic problems, and so forth. Some of them were sent to Robbentrop's office, and some others were sent by Rosenberg's office.

I beg the Tribunal to add to the record one of these documents. I speak of USSR No. 218, and the report of the representative of the Ministry of Foreign Affairs of the 17th Army, Captain Pflaiderer, whose address was "Official of Information Burea, Minister of Foreign Affairs" with von Randzau. The document was discovered by the Red Army in the State of Dirksen in Upper Silesia. While acquainted myself with these documents, I only can say in conclusion, that in 1941-42 Pflaiderer made a trip through the occupied territories of Jroslavl, through Ukrainia, Lvov, Tornopol, Proskurov, Aleksandria, Krirovoglad, and Krementshug. The object of this trip was an investigation of the economic and political conditions in the occupied territories of Ukrainia. The author of this document was also completely free of so-called humanitarian tendencies, which can be seen from the short excerpt from his report dated 28 October 1941. Pflaiderer's rights, the Tribunal will find it is quoted on page 113, second paragraph of the Document Book. I quote only one line: "There is an acute necessity to squeeze the country dry in order to secure the supplying of Germany." End of quote.

But even after such cruel individual investigation by Pflaiderer, it was evident by the behavior of his compatriots, and I therefore consider it a privilegeto draw the attention of the Tribunal to the report of the Ministry of Foreign Affairs, and in this respect I quote the report of Pflaiderer:

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"The conditions guarantee the supply and the confiscation of a larger quantity of food product on the Ukrainian , as well as the conditions of the population by the end of this October, 1941."

The Tribunal will find this part on page 114 of the Document Book, and quo

"The frame of mind of the population follows in many cases immediately after occupation of the territory by our troops (what is the reason of this) with objection or inner hatred to this country's occupation, and I speak of arrogance towards these people in the third year, and during the necessities of winter of this unfriendly country that causes the difficulties, and difficulties must be directed along difficulties of self-discipline. We must not vent our discontent among the population. Very often we acted in a way which was not logical, and thanks

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"to mistakes it could have easily been prevented of the population with loss of sympathy. We shot in villages and localities prisoners of war, and left their bodies on the roads, and these things can not be understood by the population. The troops had received wide rights for supplying their needs along many roads, and many had been agricultural cooperatives with cattle, seeds and potatoes. Evidently, the supplying of our troops is of most important; however, the system of supplying is not indifferent as to the requisition of the last chicken from a psychological point of view, as it is unreasonable or as it should be reasonable from an economic point of view; or the killing of the last pig, or the last cow."

I continue my quotation:

"The population is now without leadership. It stands apart, which feels that they look down upon them from above. That we see sabotage in the tempering of the work. We do not undertake any attempt to find any way of understanding the population."

A similar document is USSR No. 39, which is a political report of this USSR-PS 303, and was handed over to us. It is political report of a German Professor-Doctor Paul Thompson, which was written on a letterhead of the Imperial University Poznan Biological Paleontlog Institute, and which was marked by the author "Not for publication." I quote page 116 of the Document Book. This document also acquaints one with these conditions of complete arbitrary restlessness as regard local population of a temporary occupied district of the Soviet Union, and these conditions were observed by this professor during his voyage through the occupied territories of the Soviet Union from Minsk to Crimea. I quote two short excerpts:

"The absence of humanitarian tendence of the author can be quite noted by the contents of this document, and if Paul Thompson has a very painful impression from this trip, we can consider this was simply solicitude for th source of the German enterprise."

The Tribunal should find these excerpts on page 115 of the Document.

THE PRESIDENT: We will adjourn now.

(The Tribunal adjourned until 26 February 1946, at 1000 hours)